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FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
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Southwestern Bell Telephone Letter
Regarding Interconnection Between
Paging Carriers and Local Exchange
Carriers

CPD 97-24

Implementation of the Local
Competition Provisions of the
Telecommunications Act of 1996

CC Docket No. 96-98

Interconnection Between Local
Exchange Carriers and Commercial
Mobile Radio Service Providers

CC Docket No. 95-185

REPLY COMMENTS OF PAGING NETWORK, INC.
ON SOUTHWESTERN BELL TELEPHONE
LETTER REQUESTING RECONSIDERATION

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SUMMARY

The comments in response to the Public Notice make abundantly clear that the relief SWBT seeks is contrary to the FCC's current rules governing paging-LEC interconnection. What SWBT seeks is reconsideration, as even its own allies acknowledge. Therefore, as PageNet and others explained in their initial comments, SWBT's requests should be dismissed as fatally procedurally defective.

Similarly, the FCC should not, on the meager record generated by the Public Notice, address the additional issues raised by other ILEC commenters. The request by several comments for a ruling that paging carriers are not entitled to reciprocal compensation should be addressed in response to petitions for reconsideration filed last fall. As PageNet demonstrated in its filings responsive to those arguments, the FCC's determination in the *Local Competition Order* that paging carriers, like all telecommunications carriers, are entitled to reciprocal compensation should be upheld.

Moreover, other ILEC requests — such as those seeking a change in paging carriers' regulatory status as a telecommunications carrier, the introduction of artificial distinctions between Type 2 and Type 1 interconnection, and a requirement that an interconnection agreement under the 1996 Act is a prerequisite for telecommunications carriers to avoid charges for LEC-originated traffic — are untimely petitions for reconsideration. They should all be summarily denied. No basis has been offered for readdressing these issues, which are contrary to the letter and spirit of the 1996 Act, in a separate proceeding. The Commission's determinations in the *Local Competition Order* with which these parties are dissatisfied were supported in the voluminous record of CC Dockets Nos. 96-68 and 95-185 by substantial evidence regarding paging services and paging carriers.

SWBT's concern that, absent a favorable "clarification" of the rules, it will be deprived of the opportunity to recover the costs of delivering SWBT-originated traffic to paging carriers is disingenuous. As several parties, including Ameritech and U S West, make clear, these costs can be recovered through local exchange charges, which is the way SWBT and other LECs recover similar costs resulting from delivering local traffic to other carriers. Moreover, the services provided by paging carriers lead to additional traffic on the public switched network and, consequently, increased revenues for LECs.

The Commission should also take the steps necessary to ensure that those paging carriers that continued to pay charges for LEC-originated traffic prohibited by the Commission's rules be given rebates or credits.

Finally, the Commission should take the opportunity, when dismissing the request in the *SWBT Letter*, to emphasize its determinations in the *Local Competition Order* affecting paging carrier-LEC interconnection. In this way, the Commission can hopefully put a stop to the threatening and anticompetitive activities of the ILECs vis-a-vis interconnection with paging carriers. By reminding ILECs of their obligations to all telecommunications carriers, the Commission will in many cases eliminate the need for paging carriers to expend significant unnecessary resources prosecuting arbitration petitions before the state commissions simply to get ILECs to comply with the Commission's lucid regulations. At a minimum, swift Commission disposition of the *SWBT Letter* can narrow the issues that, in good faith, may be presented for arbitration, such as the level of compensation due a paging carrier for transport and termination.

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**REPLY COMMENTS OF PAGING NETWORK, INC.
ON SOUTHWESTERN BELL TELEPHONE
LETTER REQUESTING RECONSIDERATION**

Paging Network, Inc. ("PageNet"), by its attorneys and pursuant to the Commission's Public Notice dated May 22, 1997, (DA 97-1071), hereby replies to the comments on the April 25 and May 9, 1997, letters of Southwestern Bell Telephone Company ("SWBT")¹ and the May 16, 1997, letter from counsel for PageNet, AirTouch Communications, AirTouch Paging, and AT&T Wireless to the Common Carrier Bureau.²

¹ Letter from Paul E. Dorin, SWBT, to Regina Keeney, Chief, Common Carrier Bureau, FCC, dated April 25, 1997 ("SWBT Letter"); Letter from Mr. Dorin to Ms. Keeney, dated May 9, 1997 ("May 9 Letter").

² Letter from Kathleen Q. Abernathy, Airtouch Communications, Inc.; Mark A. Stachiw, AirTouch Paging; Cathleen A. Massey, AT&T Wireless Services, Inc.; and Judith St. Ledger-Roty, Kelley, Drye & Warren, LLP (for PageNet) to Ms. Keeney, dated May 16, 1997 ("Paging Carriers' Letter").

I. INTRODUCTION

This matter arises out of attempts by SWBT to circumvent the Commission's determination in the *Local Competition Order*³ that local exchange carriers ("LECs") are not permitted to charge interconnected telecommunications carriers for LEC-originated local traffic.⁴ To achieve this end, SWBT first resorted to serving notice upon PageNet and other paging carriers threatening to cease provisioning facilities unless payments for such charges were made (or, alternatively, placed into escrow until the issue could be resolved before the Commission).⁵ These bullying tactics having failed, SWBT filed its untimely request for reconsideration of Section 51.703(b), albeit styled as a request for "clarification."

SWBT is not alone in such attempts to exploit the fact that incumbent LECs ("ILECs") continue to control essential facilities by which their subscribers' calls are routed and delivered to paging carriers' facilities. GTE, for example, has recently provided one of PageNet's operating subsidiaries with "formal notices of termination" of existing interconnection arrangements entered into before the Telecommunications Act of 1996 (the

³ *Local Competition Provisions of the 1996 Telecommunications Act*, First Report and Order, 11 FCC Rcd 15499 ("Local Competition Order"), *recon. in part* 11 FCC Rcd 13042, *partially stayed sub nom. Iowa Utilities Board v. FCC*, Case No. 96-3406, slip op. (8th Cir., Oct. 15) *stay lifted in part Iowa Utilities Board v. FCC*, slip op. (8th Cir., Nov. 1, 1996).

⁴ See 47 C.F.R. 51.703(b).

⁵ See, e.g., Attachment A. In the *May 9 Letter*, SWBT backed off from its immediate threats and stated it "would like to continue to provision new facilities to all pagers for a reasonable period of time." SWBT's suggestion that this action was taken in a "spirit of good faith" is indicative of SWBT's attitude of noncompliance, given that the Commission's rules flatly prohibit the charges for which SWBT seeks payment.

"1996 Act").⁶ GTE, presumably attempting to be gracious, "invites PageNet to commence negotiations [for interconnection] immediately." GTE states that it

will not deny PageNet service, provided that the negotiations are proceeding in good faith. In such circumstances, and although GTE reserves its right to terminate service, GTE will provide service on an uninterrupted basis to PageNet during the pendency of the negotiations on the same terms and conditions as GTE is currently doing so.

GTE's "offer" to honor a request from PageNet for negotiations on these terms expires on July 5, 1997. One wonders what has become of the protection of Sections 251(a)-(c) and 252(a) of the 1996 Act. GTE's offer is really a threat to refuse to provide interconnection except on GTE's terms. In such circumstances it would be surprising if negotiations can proceed in good faith.⁷ Other carriers have engaged in similar tactics.⁸

Not surprisingly, given the tone of these letters, these ILECs are refusing to comply with the effective rules adopted in the *Local Competition Order* and seek to reinstate the superior bargaining position of the ILECs vis-a-vis paging carriers that they exploited prior to the passage of the 1996 Act and the issuance of the *Local Competition Order*. The new law sought to promote competition, to neutralize and ultimately eliminate the monopoly power of ILECs, and to eliminate artificial regulatory distinctions between telecommunications carriers and telecommunications services. Generally, the *Local*

⁶ See, e.g., Attachment B.

⁷ *Accord Joplin* p.5 n. 5. See Attachment C for abbreviations of commenters used in this Reply.

⁸ See, e.g., Attachment D. Letter from David M. Falgoust, BellSouth, to Jason Gillespie, Paging Network of Alabama, dated October 4, 1996. ("Your stated intention to unilaterally cease payment for connecting facilities is unwarranted and may result in PageNet having its service [*i.e.*, interconnection] interrupted for nonpayment.")

Competition Order was true to these principles and objectives.⁹ Specifically, based upon substantial evidence presented in the record in Dockets Nos. 96-98 and 95-185, the *Local Competition Order* found that paging carriers are telecommunications carriers.¹⁰

Furthermore, like other telecommunications carriers, paging carriers are entitled to enter into reciprocal compensation arrangements.¹¹ Concomitantly, the Commission decisively found that LECs may not charge telecommunications carriers, including paging carriers, for LEC-originated local telecommunications traffic.¹²

The strategy of SWBT, Pacific Bell, BellSouth, GTE and some other ILECs has been to proceed as though these rulings never occurred.¹³ The notices to paging carriers discussed above indicate their intent to continue assessing charges for LEC-originated traffic. In discussions concerning interconnection, it is PageNet's experience and understanding that these and similarly-intentioned ILECs are attempting to gain concessions from paging carriers by stubbornly persisting in denying paging carriers reciprocal compensation and vehemently

⁹ PageNet, despite its agreement with most of the *Local Competition Order*, sought limited reconsideration of the mechanism by which paging carriers are to receive compensation and the exclusion of paging carriers from the definition of carriers providing "telephone exchange service."

¹⁰ *Local Competition Order*, 11 FCC Rcd at 15989 (¶ 993).

¹¹ *Id.* at 15997 (¶ 1008).

¹² *Id.* at 16016, 16043 (¶¶ 1042, 1092).

¹³ Other ILECs, such as Bell Atlantic, NYNEX, SNET, Sprint, and to a limited extent (as discussed below) Ameritech, acknowledge the effectiveness of the *Local Competition Order* with respect to these issues and have, by and large, been dealing with paging carriers accordingly. These ILECs have ceased charging PageNet for the delivery of traffic originating on their networks, whether in the form of usage-based charges or facilities charges.

insisting upon payment for the delivery of ILEC-originated traffic to the paging carriers' switches. These ILECs' comments in response to the Public Notice certainly manifest a desire for a regulatory framework that parallels their obsolete worldview, the 1996 Act and the *Local Competition Order* notwithstanding. The Commission should flatly deny these efforts to undermine the sound decisions regarding paging-LEC interconnection reached in the *Local Competition Order*.

II. THE RECORD UNDERSCORES THE FACT THAT SWBT AND ITS ALLIES SEEK UNTIMELY RECONSIDERATION

In its Comments, PageNet explained that the *SWBT Letter* sought reconsideration of the *Local Competition Order* in an untimely fashion, and should therefore be dismissed as procedurally defective. Those members of the paging industry that filed comments unanimously echoed this demonstration. What is most telling, however, is that most of the ILECs filing in response to the Public Notice — including SWBT itself — essentially agreed with PageNet and the other paging carriers, as discussed in Section II. A. below.

In addition, the ILEC commenters raised several other issues relating to the status of paging carriers under the 1996 Act and their entitlement to reciprocal compensation. These arguments, like that set forth in the *SWBT Letter*, are requests for changes in the FCC's rules, not for clarification, as explained below in Section II. B. To the extent these issues were raised in timely petitions for reconsideration; they should be addressed in that context. (PageNet has already responded to those arguments in its comments on and replies to oppositions to the petitions for reconsideration.) Otherwise, just as the Commission should dismiss the SWBT request, these other requests should be rejected. Moreover, no

justification has been shown for a new proceeding to address paging-LEC interconnection, which has already been addressed based upon a voluminous record in the *Local Competition Order*.

A. SWBT'S Requested Clarification of Section 51.703(b) of the Commission's Rules Is a Fatally Procedurally Defective Request for a Rule Change

In the *SWBT Letter*, SWBT sought a "clarification" that Section 51.703(b) does not preclude charges for facilities used solely to deliver SWBT-originated traffic to a paging carrier for transport and termination. In the initial round of comments, not only did the paging industry resoundingly demonstrate that no such clarification of the Commission's Rules was necessary to answer this question in the negative,¹⁴ but SWBT's putative allies themselves noted that the Commission's rules must change, not just be clarified, to provide the outcome sought by SWBT. More importantly, SWBT itself confirmed that it, at bottom, seeks a rule modification.

U S West, for example, states its position that "the Commission must prescribe some means for LECs to recover their costs of paging interconnection."¹⁵ U S West continues by suggesting that "*given the existing rules*," the "only options" are a surcharge on paging callers or recovery through local exchange rates.¹⁶ In other words, U S West acknowledges

¹⁴ See, e.g., *PageNet* p. 3; *TSR* p. 3; *Allied* pp. 2-3; *Arch* pp. 5-6; *PageMart* pp. 3-4.

¹⁵ *U S West* p. 7.

¹⁶ *Id.* pp. 7-8 (emphasis supplied). *PageNet* addresses below in Section III why LECs, to the extent they are not already doing so, should recover these costs through
(continued...)

that the existing rules are not ambiguous and preclude the "clarification" SWBT seeks.

Similarly, the USTA acknowledges that the Commission's rules have the effect claimed by the paging carriers. Claiming that "the Commission could not have intended this result," USTA nonetheless recognizes that the "solution," from its perspective, is for the Commission to "modify[] its regulations."¹⁷

BellSouth suggests that the issue raised by the *SWBT Letter* is currently pending before the Commission on reconsideration, underscoring BellSouth's understanding that SWBT raises a reconsideration issue.¹⁸ At another point, BellSouth implies that, in fact, the issue SWBT raises is not timely for reconsideration, and urges the Commission to "grant

¹⁶(...continued)

local exchange rates (*not* a paging caller surcharge), just as they do with all other local traffic delivered to other carriers.

¹⁷ *USTA* pp. 1-2.

¹⁸ *BellSouth* p. 11. PageNet takes issue with the BellSouth assertion that the issue raised by SWBT was included in a timely petition for reconsideration. Two carriers did, indeed, file for reconsideration of the Commission rule stating that all carriers, including paging carriers, are entitled to enter into reciprocal compensation arrangements with LECs — (Kalida Telephone Company ("Kalida") and the Local Exchange Carrier Coalition ("LECC")). But *no* person raised on reconsideration the Commission's independent determination that LECs may not charge other telecommunications carriers for LEC-originated calls, the issue addressed by the *SWBT Letter*. Several ILECs renew the request for reconsideration of the Commission determination in the *Local Competition Order* that paging carriers are entitled to reciprocal compensation. *See, e.g., BellSouth* p. 8, *GTE* p. 7, *Ameritech* p. 4. This issue is not ripe for consideration, however, as part of the disposition of the *SWBT Letter*. In any event, PageNet has addressed these issues in its *Comments in Response to Petitions for Reconsideration*, CC Dockets Nos. 96-68 and 95-185 (filed October 31, 1996) ("Reconsideration Comments") pp. 2-13, and its *Consolidated Reply to Oppositions to Petitions for Reconsideration*, CC Dockets Nos. 96-98 and 95-185 (filed November 14, 1996) ("Reply to Oppositions") pp. 1-8. PageNet incorporates those arguments herein by reference thereto.

SWBT's request and initiate a new rulemaking proceeding."¹⁹ Either way, BellSouth's comments underscore the procedural deficiency of BellSouth's request for "clarification."

Moreover, Sprint, which does not support the request in the *SWBT Letter*, leaves no doubt that the Commission's rules are *not* in need of clarification. With respect to SWBT's proposed charges for the delivery of traffic, Sprint emphasizes that "a LEC should not levy a charge for the origination of traffic on its network. Each carrier should be responsible for the transport of an originating call from its end office to the relevant point of interconnection. In this sense, Sprint must disagree with the position proffered by SWBT."²⁰

Ameritech largely concurs with Sprint. Where the interconnection arrangement is what has historically been called Type 2, interconnection is provided between a paging provider's mobile telephone switching office ("MTSO") and the trunk side of the ILEC tandem switch. Ameritech concedes that, in this arrangement, the ILEC charges the calling party for delivery of the originating traffic to the paging switch.²¹ In a manner consistent with Section 51.703(b) of the Commission's Rules, Ameritech notes that it will assess neither a usage-based nor a recurring (*i.e.*, facilities) charge for the delivery of traffic to the paging

¹⁹ *BellSouth* p. 11.

²⁰ *Sprint* p. 2.

²¹ *Ameritech* p. 5. As Ameritech notes, there is also a reverse billing Type 2 available to paging carriers at their discretion, whereby the paging carriers assume the charges.

carrier in a Type 2 arrangement.²² What SWBT seeks is contrary to that which Ameritech says it provides.

Finally, SWBT itself essentially admits that it seeks a rule change. As an initial matter, in the *SWBT Letter*, SWBT acknowledged that it could not assess a usage-based charge for SWBT-originated traffic.²³ In its joint comments with Pacific Bell, SWBT made plain that its purpose for seeking authority to assess a monthly recurring charge was identical to that for such proscribed usage-based charges, i.e., to recover the costs for the "transport

²² *Id.* at 6. While Ameritech correctly notes the consequences of a Type 2 arrangement, it makes an erroneous distinction between Type 2 and Type 1 interconnection in an attempt to treat them differently. This is a distinction that the Commission did not make in its rules, despite recognition of the historically different types of CMRS-LEC interconnection. *See, e.g., Equal Access and Interconnection*, Notice of Proposed Rulemaking and Notice of Inquiry, 9 FCC Rcd 5408, 5451 (description of Type 1, Type 2A, and Type 2B interconnection facilities). PageNet submits that a distinction between Type 1 and Type 2 interconnection for purposes of Section 51.703(b) is unjustified. The function performed by the paging carrier's MTSO in either case is comparable to that of any other interconnected telecommunications carrier that accepts LEC-originated traffic for completion. Moreover, the overwhelming reason that PageNet and other paging carriers take Type 1 service to the extent they do is the result of the ILECs' monopolistic behavior in the past whereby they, in many situations, refused to accord paging carriers with carrier status and declined to offer anything but Type 1 interconnection. *Accord Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, Notice of Proposed Rulemaking, 11 FCC Rcd 5020, 5026 (1996) (An ILEC "may have the incentive and ability to prevent or reduce the demand for interconnection with a prospective local competitor, such as a CMRS provider, below the efficient level by denying interconnection or setting interconnection rates at excessive levels.") Although, Ameritech, for example, states that paging carriers are free to switch to Type 2 interconnection and avoid charges for LEC-originated traffic, this apparently simple solution obscures the tremendous costs that such a switch would impose upon paging carriers. In sum, the Commission was correct in making no distinction between Type 1 and Type 2A interconnection in its rules.

²³ *SWBT Letter* p. 2.

of [SWBT-originated] calls" to paging carriers.²⁴ SWBT's attempt to distinguish between charges for traffic and for facilities, therefore, is an attempt to elevate form over substance, as numerous parties point out.²⁵

Moreover, SWBT acknowledges that, if the paging industry's understanding of Section 51.703(b) of the rules is correct, *i.e.*, that it is sufficient to resolve the issue raised by the *SWBT Letter*, then the rules must be changed to achieve the result SWBT desires.²⁶ SWBT continues to contend incorrectly that it is Section 51.709(b), which has been stayed, that addresses the issue it raises. However, Section 51.709(b), by its own terms, deals with LEC charges for *other-carrier-originated traffic* delivered to LECs when traffic is exchanged in both directions over the same LEC-provided facilities.²⁷ Section 51.703(b), in contrast, addresses the charges for delivery of *LEC-originated traffic* to other carriers. Even BellSouth points out that Section 51.709(b), on its face, is inapplicable to facilities that carry one-way, *e.g.*, land to mobile, traffic only.²⁸

In sum, the record makes clear that, under the 1996 Act and the Commission's Rules adopted in the *Local Competition Order*, that LECs may not charge paging carriers, or any

²⁴ *SWBT* pp. 4-5.

²⁵ *E.g.*, *Sprint* p. 4; *Allied* p. 2; *Arch* p. 12; *PCIA* pp. 7-8 & n. 15.

²⁶ *SWBT* p. 10.

²⁷ 47 C.F.R. § 51.709(b).

²⁸ *BellSouth* p. 7 n. 16. BellSouth is wrong, however, that *no* rule adopted in the *Local Competition Order* applies to LEC attempts to impose charges for facilities used to deliver LEC-originated traffic. As PageNet explained in its comments, Section 51.703(b) prohibits all charges, regardless of how characterized, for the delivery of traffic. *PageNet* p. 8.

other telecommunications carriers, for delivery of LEC-originated traffic to the point of interconnection, whether through a usage-based or monthly recurring charge. Thus, the *SWBT Letter* is an untimely request for reconsideration and should be dismissed.

B. The Additional Issues Raised by the ILEC Commenters Are Similarly Defective.

Several ILEC commenters raise issues in addition to that raised by SWBT. In the same way, these issues seek rule changes that are not ripe for decision in this "clarification" proceeding. To the extent these matters are not already the subject of reconsideration, they should be summarily dismissed at this time. Further, requests for a rulemaking proceeding to address LEC-paging interconnection as separate from LEC-telecommunications carrier interconnection are not justified, as these issues were thoroughly addressed in the *Local Competition Order* based upon the substantial record developed in both Dockets Nos. 95-185 and 96-68.

First, a number of the ILECs contend that the Commission should revise its decision that paging carriers are entitled to compensation for the transport and termination of LEC-originated traffic.²⁹ As noted earlier, this argument was made in two petitions for reconsideration last September. *See* n. 18 *supra*. The Commission should address this issue in the context of the other timely filed petitions for reconsideration. Furthermore, for the reasons stated in PageNet's *Reconsideration Comments* and *Reply to Oppositions*, these requests should be denied when the Commission disposes of those petitions.

²⁹ *E.g.*, *BellSouth* p. 8; *GTE* p. 7; *Ameritech* p. 4.

Second, other ILECs raise the more fundamental issue of whether paging carriers should even be considered telecommunications carriers.³⁰ This issue was not raised on reconsideration and any attempt to do so in the instant context would be improper. More importantly, the *Local Competition Order* correctly found that paging carriers provide a telecommunications service and meet the other prerequisites for classification as "telecommunications carriers" under the 1996 Act. This decision was certainly not novel. The Commission has considered paging providers as carriers of telecommunications service for many years,³¹ and in 1994 properly determined that paging providers are commercial mobile radio service ("CMRS") providers.³² Any suggestion that paging carriers are merely "end users" and not to be afforded the entitlements of telecommunications carriers under the 1996 Act is a call for a return to the dark ages, and reflects the persisting monopolistic worldview of some ILECs bent on denying paging carriers co-carrier treatment. Any such request should be flatly denied.³³

³⁰ *Lexington* p. 3 n. 4; *Independent Alliance* p. 5.

³¹ See, e.g., *Radio Common Carrier Services (Post-Divestiture BOC Practices)*, 59 RR 2d 1275, 1278 (1986) and decisions cited therein; *The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services*, 2 FCC Rcd 2910, 2915 (1987) ("Promote Competition").

³² *Implementation of Sections 3(n) and 332 of the Communications Act*, Second Report and Order, 9 FCC Rcd 1411, 1454 (1994).

³³ Sprint suggests that paging carriers as "telecommunications carriers," should not be permitted to purchase services out of end user tariffs for purposes of interconnection. *Sprint* p. 3. PageNet knows of no reason why carriers should not be able to order out of other carriers' tariffs to obtain services or facilities to be used in the provision of telecommunications services. If the carrier pays for any services so ordered, PageNet does not see why this should not be allowed, if the carrier believes that by doing so it can be more efficient in providing its own services.

Third, BellSouth contends that until a telecommunications carrier enters into an interconnection agreement that provides for reciprocal compensation under the 1996 Act, the telecommunications carrier is not entitled to the benefit of reciprocal compensation, including Section 51.703(b) of the Commission's Rules. On the one hand, PageNet points out that pursuant to Section 20.11 of the Commission's Rules, which pre-dates the 1996 Act, and even earlier Commission rulings,³⁴ paging carriers and other CMRS carriers have already been entitled to reciprocal compensation. Thus, a paging carrier is not entitled to compensation absent an interconnection arrangement.³⁵ On the other hand, and more important for present purposes, telecommunications carriers are entitled to benefit immediately from the prohibition against LEC charges for LEC-originated traffic with or without an interconnection arrangement:

*As of the effective date of this Order, a LEC must cease charging a CMRS provider or other carrier for terminating LEC-originated traffic and must provide that traffic to the CMRS provider without charge.*³⁶

Significantly, Section 51.703(b) also places no conditions on the prohibition against charging for LEC-originated traffic.³⁷ In short, as PCIA notes, the "negotiation of the terms of

³⁴ See, e.g., *Promote Competition*, 2 FCC Rcd at 2915-16.

³⁵ See 47 C.F.R. § 51.717(a).

³⁶ *Local Competition Order*, ¶ 1042 (emphasis supplied).

³⁷ Ameritech suggests that Section 51.703(b) was adopted solely to proscribe LEC charges to CMRS providers for the *termination* of LEC-originated traffic. *Ameritech* p. 3. However, the rule clearly covers any charge for traffic that originates on a LEC's network.

cessation of charges for originating traffic is not required,"³⁸ as BellSouth argues.

Accordingly, BellSouth's suggestion that paging carriers may be charged for LEC-originated traffic until such time as they enter into interconnection agreements under the 1996 Act should be dismissed categorically.

Finally, U S West calls for a separate rulemaking to address paging offered by paging carriers as distinct from paging provided as part of another CMRS service, *e.g.*, Sprint Spectrum's provision of paging on its PCS phones.³⁹ Neither U S West nor any other ILEC provides a justifiable rationale to treat paging offered by carriers dedicated to that one service in a different manner than paging provided by other CMRS providers because there is none. To make such a regulatory distinction would confer an artificial and uneconomic advantage on the paging services of other CMRS providers vis-a-vis the services of traditional paging carriers. Further, it would be contrary to a fundamental principle of the *Interconnection Order* based upon the 1996 Act: the elimination of artificial regulatory distinctions between and among telecommunications carriers. Accordingly, U S West's demand for a rulemaking to address paging interconnection as a separate issue, apart from interconnection generally, should be denied as contrary to the spirit and letter of the Act and well-founded Commission policies.

³⁸ *PCIA* p. 3 n. 5. *See also Best*, p. 8 (paging carriers should not have to engage in expensive litigation to obtain ILEC compliance with the rules).

³⁹ *See U S West* pp. 2, 8. *See also GTE* p. 7; *BellSouth* p. 11.

III. SECTION 51.703(B) OF THE RULES DOES NOT PRECLUDE RECOVERY OF AN ILEC'S COSTS.

SWBT reiterates in its comments its position that, unless it can charge paging carriers for calls originating on its network destined for paging units, it will not recover its costs of carrying the traffic.⁴⁰ This assertion is on its face disingenuous. As the comments of Ameritech and U S West make clear, for example, an ILEC can charge the calling party through local exchange rates.⁴¹ Indeed, where the calling party has measured business service, the ILEC already charges the caller whenever he or she calls a paging unit. As Metrocall observes, a majority of pages are initiated by business callers.⁴² Moreover, the ILEC commenters conveniently ignore that paging, by encouraging calls back to the ILEC's subscribers, generate additional traffic and revenues for local exchange carriers.⁴³

In short, ILECs have an adequate opportunity to recover their costs of delivering traffic to paging carriers through local exchange rates paid by end users. This is exactly what ILECs do to recover costs for delivering traffic to other carriers, such as CLECs, for transport and termination. Paging carriers should be treated no differently. U S West's suggestion that an end user surcharge be placed on calls placed to NXX codes assigned to

⁴⁰ *SWBT* pp. 4-5.

⁴¹ *Ameritech* p. 8; *U S West* p. 8. For this reason, Section 51.703(b) of the Commission's Rules does not lead to confiscation of ILEC property without adequate compensation. The constitutional arguments of U S West (p. 7) and others are simply groundless.

⁴² *Metrocall* p. 7.

⁴³ *See ProNet* p. 6.

paging companies would not be a viable alternative.⁴⁴ A special surcharge of this sort would single out calls destined for one type of carrier, when the functionalities and costs of LECs to originate and deliver traffic to all local carriers are essentially the same. Such discrimination is inconsistent with an essential principle underlying the 1996 Act and the *Local Competition Order* — ILECs are to treat all interconnecting telecommunications carriers in a nondiscriminatory manner. In fact, there is no reason to believe that ILECs do not already recover their costs of delivering traffic to paging carriers in this way, including through their flat-rate charges to end users, for local exchange service.⁴⁵ Certainly, no record has been assembled to analyze the extent to which such costs are being recovered today.

IV. THE COMMISSION SHOULD TAKE STEPS TO FACILITATE REBATES FOR CHARGES THAT VIOLATED SECTION 51.703(b)

As noted earlier, from the date Section 51.703(b) became effective, LECs have been prohibited from assessing charges for the delivery of LEC-originated local traffic to other telecommunications carriers. For some period following the effective date of Section 51.703(b), and in some cases through the present, many paging carriers continued to pay these charges, albeit under protest, to those ILECs that refused to comply with the new rules. These paging carriers, it is true, could seek to recover these unlawful charges by engaging in the time-consuming and costly method (both for the parties and the agency) of filing formal

⁴⁴ See *U S West* p. 8.

⁴⁵ Moreover, many of the significantly above-cost vertical services, such as call waiting and Caller ID, also recover significant local exchange costs, which most probably include costs of delivering traffic to paging carriers and other interconnected local telecommunications carriers.

complaints before the Commission. However, PageNet concurs with Metrocall that the public interest would be far better served by the Commission taking the necessary steps to order the ILECs that continued to collect charges in violation of Section 51.703(b) to give rebates or credits to paging carriers that paid such charges after the effective date of that rule.⁴⁶

V. CONCLUSION

For the foregoing reasons, and those set forth in PageNet's initial comments and the Paging Carriers' Letter, PageNet respectfully submits that the relief requested in the *SWBT Letter* should be denied. The record provides ample demonstration that SWBT seeks untimely reconsideration of the FCC's rules, which provide clearly and unequivocally that paging carriers may not be charged for the delivery of LEC-originated traffic to their switches. In addition, the challenges of other ILECs that question the basic determinations concerning the status of paging providers of the FCC in the *Local Competition Order* should be dismissed as being untimely requests for reconsideration and for being contrary to the 1996 Act, well-established Commission policies, and the public interest.

The Commission should also take the steps necessary to ensure that those paging carriers that continued to pay charges for LEC-originated local traffic after the effective date of the Commission's Rules be given rebates or credits.

Finally, the Commission should take the opportunity, when dismissing the request in the *SWBT Letter*, to emphasize its determinations in the *Local Competition Order* affecting

⁴⁶ See *Metrocall* p. 11; *PCIA* p. 5.

paging carrier-LEC interconnection. In this way, the Commission can hopefully put a stop to the threatening and anticompetitive activities of the ILECs vis-a-vis interconnection with paging carriers. By reminding ILECs of their obligations to all telecommunications carriers, the Commission will in many cases eliminate the need for paging carriers to expend significant unnecessary resources prosecuting arbitration petitions before the state commissions simply to get ILECs to comply with the Commission's lucid regulations. At a minimum, swift Commission disposition of the *SWBT Letter* can narrow the issues that, in good faith, may be presented for arbitration, such as the level of compensation due a paging carrier for transport and termination.

Respectfully submitted,

PAGING NETWORK, INC.

By:



Judith St. Ledger-Roty

Edward A. Yorkgitis, Jr.

KELLEY DRYE & WARREN LLP

1200 19th Street, N.W.

Suite 500

Washington, DC 20036

(202) 955-9600

Its Attorneys

June 27, 1997

RECEIVED APR 21 1997

Southwestern Bell Telephone
One Bell Plaza
Room 2802
Dallas, Texas 75202

April 17, 1997

Paging Network, Inc.
4965 Preston Park Blvd., Ste. 600
Plano, TX 75093
ATT: Bill Wiginton

Dear Mr. Wiginton:

On 3-18-97 we received a verbal dispute from PageNet in the amount of \$122.08 on originating charges which you withheld from payment on your 3-5-97 bills. A list of amounts by accounts is attached.

The FCC has proposed new rules to govern the way telecommunications carriers interconnect and compensate each other for the interchange of traffic. However, many of the FCC's new rules were Stayed by action of the 8th Circuit Court on November 1, 1996. The Court subsequently lifted the Stay on specific Rules applicable to the Commercial Mobile Radio Service (CMRS) providers, i.e., 51.701, 51.703, and 51.717. Despite the fact that the Stay was lifted on some of the FCC's Rules, Rule 51.709, which addresses the charges associated with originating facilities, remains Stayed as of this date. Moreover, application of the FCC's rules as between LECs and pagers has given rise to some serious problems. Despite the reciprocal compensation requirement in the Telecommunications Act, for example, many paging companies are interpreting the FCC's rules to provide for compensation only from LECs to pagers, with no reciprocity at all.

We understand that PageNet may not agree with SWBT's position regarding charges for originating facilities; however, SWBT will continue to bill for originating connecting circuits until the Stay is acted upon and the Order becomes effective. In a good faith effort to resolve the dispute, SWBT has discussed the issue with several pagers and with the FCC. While these discussions have been productive, to date they have not resolved the dispute.

SWBT values PageNet as a customer and is interested in resolving this issue in a spirit of cooperation. However, while we have no interest in interrupting service to any party's customers, we clearly cannot continue to provide a free service to you forever. Therefore, in good faith we will promptly seek immediate clarification of this issue from the FCC. In the interim, we simply ask that disputed amounts to date and going forward be paid into an escrow account (as mutually agreed by us both) pending resolution of this issue. Of course, if you refuse to take even this action, we will have no choice but to cease provision of facilities beginning May 1, 1997. We hope that in response to our good faith efforts, and in consideration to all customers, you will be amenable to this fair approach.

Please contact your service representative Diane Frazier on 214 464-1565 to discuss this letter or any disputed charges.

If payment has been made, please accept our thanks and disregard this notice.

Sincerely,

A handwritten signature in cursive script that reads "Jim Darnell".
Manager-ICSC

Certified No. P559 428 527



GTE Telephone Operations
West Area

One GTE Place, CA500DG
Thousand Oaks, CA 91362-3811
(805) 372-7693
(805) 373-1496 (fax)

June 5, 1997

Mr. Marcus Stevensen
Switching System Manager
Paging Network of Los Angeles, Inc.
6001 Rickenbacker
Commerce, CA 90091-1130

RE: Notice of termination of that certain Connection and Traffic Interchange Agreement Cellular Services and Non-Cellular Mobile Radio Services between GTE California Incorporated ("GTE") and Paging Network of Los Angeles, Inc. ("PageNet") effective May 1, 1991 ("the Agreement").

Dear Mr. Stevensen:

Please be advised that GTE hereby provides PageNet with notice of termination of the Agreement, pursuant to Article XXI of the Agreement, effective August 8, 1997.

Notwithstanding the foregoing formal notice of termination of the Agreement, GTE invites PageNet to commence negotiations immediately with GTE, to the extent they are not already in progress, to enter into an interconnection agreement with PageNet. While such negotiations are in progress, and at PageNet's request, GTE will not deny PageNet service, provided that the negotiations are proceeding in good faith. In such circumstances and although GTE reserves its right to terminate service, GTE will provide service on an uninterrupted interim basis to PageNet during the pendency of the negotiations on the same terms and conditions as those contained in the Agreement. It is GTE's intent and hope that the negotiations proceed expeditiously and that the parties reach agreement in order that PageNet's interconnection continue uninterrupted following the effective date of termination under the Agreement.

Provided negotiations are not already in progress and PageNet intends to negotiate for interconnection with GTE, please send a written request for negotiations to me at the above address no later than (30) calendar days from the date of this letter to commence these negotiations. GTE looks forward to successfully negotiating an interconnection agreement with PageNet.

Sincerely,

A handwritten signature in cursive script that reads "Sandy White".

Sandy White
Sr. Adm. - Carrier Technical Sales
Carrier Markets

c: David Gamble, Corporate Counsel, Paging Network, Inc.
4965 Preston Park Blvd., Suite 600, Plano, TX 75093

Michael M. Lachman, Interconnect Manager, PageNet
21216 Cabot Blvd., Hayward, CA 94545

N. Pumphrey - Account Manager - GTE

Parties Filing Initial Comments in CPD 97-24

Abbreviation	Full Name	Comments Filed
Advanced Paging	Advanced Paging, Inc., Mark A. Apsley d/b/a Progressive Paging, et al.	6/13/97
Allied	Allied Personal Communications Industry Association of California	6/12/97
Ameritech	Ameritech	6/13/97
Arch	Arch Communications Group, Inc.	6/13/97
ATU	Anchorage Telephone Utility	6/13/97
BellSouth	BellSouth Corp.	6/13/97
Best	Best Communications	6/13/97
Contact	Contact New Mexico, L.P.	6/13/97
Coyle	Robert L. Coyle, Jr.	6/12/97
GTE	GTE Service Corp.	6/13/97
Independent Alliance	Independent Alliance	6/13/97
Joplin	Joplin Beepers	6/13/97
Lexington	Lexington Telephone Company	6/13/97
Metrocall	Metrocall, Inc.	6/13/97
PageMart	PageMart Wireless, Inc.	6/13/97
PageNet	Paging Network, Inc.	6/13/97
PCIA	Paging & Narrowband PCS Alliance of the Personal Communications Industry, Inc.	6/13/97
ProNet	ProNet, Inc.	6/13/97
SMR Systems	SMR Systems, Inc.	6/12/97
Sprint	Sprint Corp.	6/13/97
SWBT	Southwestern Bell Telephone Co., Pacific Bell & Nevada Bell	6/13/97
TSR	TSR Paging, Inc.	6/13/97
USTA	United States Telephone Association	6/13/97
U S West	U S West, Inc.	6/13/97